

E648KIMF

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
-----x

3 TAE H. KIM, et al.,

4 Plaintiffs,

5 v.

12 Cv. 6344 (MHD)

6 KUM GANG INC., et al.,

7 Defendants.

8 -----x  
9 June 4, 2014  
10 Before:  
11 2:20 p.m.  
12 HON. MICHAEL H. DOLINGER  
13 Magistrate Judge  
14 APPEARANCES  
15 ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND  
16 Attorneys for Plaintiffs  
17 BY: KENNETH KIMERLING  
18 BETHANY Y. LI  
19 -and-  
20 LATINO JUSTICE PRLDEF  
21 BY: ELIZABETH JOYNES  
22 LAURA HUIZAR  
23 -and-  
24 SHEARMAN & STERLING, LLP  
25 BY: JOANNA SHALLY  
JUNG YOO  
ROBERT GIUSTI, & ASSOCIATES, PLLC  
Attorneys for Defendants  
BY: KATIE AMBROZIAK

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1 (Case called)

2 THE COURT: We are here to start a trial. Plaintiffs  
3 ready?

4 MR. KIMERLING: Plaintiffs are ready, your Honor.

5 THE COURT: Defendants ready?

6 MS. AMBROZIAK: Defendants ready.

7 THE COURT: OK. I don't ask for it, but if either of  
8 the parties want to make an opening statement, feel free to do  
9 so.

10 MR. KIMERLING: Kenneth Kimerling for the plaintiffs.  
11 As the Court knows, we submitted a pretrial memorandum.

12 THE COURT: Yes.

13 MR. KIMERLING: And I know you have read it, and I  
14 don't need to repeat anything. I am just happy to respond to  
15 any questions the Court might have.

16 THE COURT: Well, at the moment I have none.

17 MR. KIMERLING: Thank you.

18 MS. AMBROZIAK: The parties have agreed to proceed  
19 immediately and waive opening statement.

20 THE COURT: OK. We are proceeding on the basis of  
21 direct testimony being offered by various declarations with  
22 live cross-examination and anything that follows from it.

23 So you can call your witness.

24 MR. KIMERLING: If I can make a statement before we  
25 begin. I provided the Court and the reporter with a list of

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1 names and numbers so that we can keep track. It's not quite a  
2 score card but close enough.

3 I just want to point out that number 12, Mr. Chunsik  
4 Yu, to whom I apologize for misspelling his name constantly, we  
5 are now spelling it correctly with a "U." But in the  
6 declarations and in other documents in this court it's been  
7 spelled Y-O-O instead of Y-U. I just want to note that for the  
8 record.

9 THE COURT: OK.

10 MS. JOYNES: Your Honor, Elizabeth Joynes for the  
11 plaintiffs. I would like to call the first witness, Julian  
12 Ventura.

13 THE COURT: His testimony is what exhibit?

14 MS. JOYNES: It's marked as Plaintiffs' Exhibit 33.  
15 ROSALINO JULIAN VENTURA,

16 called as a witness by the plaintiffs,  
17 having been duly sworn, testified as follows  
18 through certified Spanish interpreter:

19 THE COURT: Please be seated.

20 State your full name and spell it.

21 THE WITNESS: My name is Rosalino Julian Ventura,  
22 R-O-S-A-L-I-N-O, J-U-L-I-A-N, V-E-N-T-U-R-A.

23 MS. JOYNES: Your Honor, may I approach the witness?

24 THE COURT: You may.

25 (Continued on next page)

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1 DIRECT EXAMINATION

2 BY MS. JOYNES:

3 Q. Mr. Ventura, I am going to show you what has been marked as  
4 Plaintiffs' Exhibit 33, your declaration in English.

5 I am going to direct your attention to the first page  
6 of the document. Do you see your name on the first page?

7 A. Yes.

8 Q. Now, I will direct you to the last page of the document.

9 Is that your signature on the top of the last page?

10 A. Yes.

11 Q. Are the statements in this declaration true?

12 A. Yes.

13 MS. JOYNES: Your Honor, plaintiffs would like to  
14 offer into evidence Plaintiffs' Exhibit 33.

15 THE COURT: Any objection?

16 MS. AMBROZIAK: No objection.

17 THE COURT: Exhibit 33 is received.

18 (Plaintiffs' Exhibit 33 received in evidence)

19 MS. JOYNES: Thank you, your Honor.

20 THE COURT: Cross-examination.

21 MS. AMBROZIAK: Do you mind if I remain seated here?

22 THE COURT: Otherwise you can use the podium.

23 CROSS EXAMINATION

24 BY MS. AMBROZIAK:

25 Q. Good afternoon, Mr. Ventura.

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Ventura - cross

1 A. Good afternoon.

2 Q. Your employment began in June 2006 at Kum Gang San  
3 restaurant, is that correct?

4 A. Correct.

5 Q. Did you interview for your job at the restaurant?

6 A. No.

7 Q. Who was the individual that hired you at the restaurant?

8 A. A captain that was working at that time.

9 Q. Do you recall the name of this captain?

10 A. No.

11 Q. Was it any of the named defendants that hired you?

12 A. No.

13 Q. You worked as a busser at Kum Gang San restaurant, correct?

14 A. Yes.

15 Q. Did you work at the Flushing or Manhattan location?

16 A. Flushing.

17 Q. Have you ever worked at the Manhattan location?

18 A. No.

19 Q. During your employment, was your job title always a busser?

20 A. Yes.

21 Q. What were your job duties as a busser when you were hired  
22 in approximately June 2006?

23 A. I had to clean the tables, accommodate or place all the  
24 utensils that were used, bring down the deliveries and put them  
25 in place also, and everything that was needed for the take-out

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Ventura - cross

1 food as well.

2 Q. Were you ever promoted during your employment?

3 A. What is a promotion?

4 Q. Were you ever elevated from a busser to a captain at the  
5 restaurant?

6 A. No.

7 Q. Did your job duties you just described ever change while  
8 employed at the restaurant?

9 A. Yes.

10 Q. What were your new job duties?

11 A. When I changed positions, I got a new title.

12 MS. AMBROZIAK: Can the interpreter repeat that? I  
13 didn't hear that.

14 A. When I changed positions, I got a new title.

15 Q. What was the new title?

16 A. When I worked in the special rooms.

17 Q. What were your job duties in the special rooms?

18 A. I had to take the tickets upstairs, bring the orders down.

19 Q. Was your job title still busser while employed in the  
20 special rooms?

21 A. Yes.

22 Q. You stated in your declaration that you worked in the  
23 dining hall, correct?

24 A. In the dining hall?

25 Q. Yes.

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Ventura - cross

1 A. In one part of the hall or can you explain?

2 Q. Did you work in the main dining area in the restaurant?

3 A. Yes, at first.

4 Q. You referred to it in your declaration as the regular  
5 dining hall. Is that where you worked?

6 A. Yes, at first, when I first started working there.

7 Q. So there was a time during your employment when you were  
8 not assigned to the regular dining hall?

9 A. Approximately one year later my job changed and I was  
10 working in the special rooms.

11 Q. How long did you work in the special room?

12 A. That was approximately in 2007, approximately up until  
13 November of 2013.

14 Q. Did you ever move back to the dining hall after the special  
15 rooms?

16 A. Yes.

17 Q. That was in November 2013, correct?

18 A. Yes.

19 Q. Who was your supervisor when you were a busser in the  
20 dining hall?

21 A. The captain.

22 Q. Did you have more than one supervisor while you worked in  
23 the dining hall?

24 A. He was the one that directed me.

25 Q. Who is "he" that you are referring to?

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Ventura - cross

1 A. The captain.

2 Q. Do you recall the name of the captain?

3 A. No.

4 Q. Was this captain the only supervisor you had while employed  
5 in the dining hall?

6 A. The manager also.

7 Q. How many managers were at the restaurant during your  
8 employment?

9 MS. JOYNES: Objection. Time period, please.

10 MS. AMBROZIAK: During his employment.

11 A. While I was employed there?

12 Q. Yes.

13 A. How many managers were there?

14 Q. Yes.

15 A. There were two.

16 Q. Can you name these two managers?

17 A. It's a little complicated because they are Korean names.

18 One was called Myungja Lee and the other one was Chunsik Yu,  
19 something like that.

20 Q. How many sections was the dining hall comprised of when you  
21 worked at the restaurant?

22 A. Four or five.

23 Q. Can you name these four or five sections?

24 A. There was A, B, C, D, and there was another area that was  
25 larger that they would call it banquet, something like that.

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Ventura - cross

1 Q. While you were employed at the restaurant, did the bussers  
2 rotate sections in the dining hall?

3 A. Yes.

4 Q. How often did the bussers rotate sections?

5 A. The bussers or the waiters or the busboys?

6 Q. I am only referring to the busboys.

7 A. I'm sorry. We all worked together.

8 Q. Did both the waiters and the bussers rotate sections?

9 A. The busboys would not rotate.

10 Q. Your testimony is only the waiters would rotate sections?

11 A. Well, they worked separately; we worked separately.

12 Q. Did you ever work in a particular section in the dining  
13 hall more than one week in a row?

14 A. I only worked in the dining hall while I was working there.

15 Q. While working in the dining hall, did you ever work a  
16 specific section in that dining hall more than one week in a  
17 row?

18 A. You mean was there one post that I worked?

19 Q. Were you ever assigned to section A in the dining hall?

20 A. No. I had to work the whole dining hall.

21 Q. So you as a busser would work all five sections during your  
22 shift in the dining hall, is that correct?

23 A. Yes.

24 Q. You did not work in the banquet room at the restaurant, is  
25 that correct?

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Ventura - cross

1                   THE INTERPRETER: In what room?

2 Q. Banquet room.

3 A. No.

4 Q. You did work in the special rooms, that's correct?

5 A. Yes.

6 Q. Who was your supervisor in the special rooms?

7 A. The captain that worked with me and the manager that was  
8 there.

9 Q. Do you recall the name of this captain?

10 A. No. No.

11 Q. Do you recall the name of the manager of the special rooms?

12 A. Myungja Lee.

13 Q. Were these two individuals the only supervisors you had  
14 while working in the special rooms?

15 A. Also the general manager.

16 Q. Was the special rooms divided into sections?

17 A. Yes.

18 Q. How many sections?

19 A. Four.

20                   THE COURT: By the way, do you know the name of the  
21 general manager who was supervising you in the special rooms?

22                   THE WITNESS: Besides the name that I gave?

23                   THE COURT: Well, I think you mentioned the name of a  
24 manager, but you said there was also a general manager. If  
25 that is correct, do you know the name of the general manager?

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Ventura - cross

1                   THE WITNESS: It's a little complicated, but I can try  
2 to say it. Chunsik Yu, something like that.

3 Q. Are these four sections labeled in the special rooms?

4 A. Yes.

5 Q. What are the labels?

6 A. They are labeled by numbers so it's number 1, 2, 3, and 5.

7 Q. There is no 4?

8 A. No.

9 Q. While you were employed in the special rooms, did the  
10 bussers rotate sections?

11 A. I couldn't say because I wasn't working there; I was  
12 working below.

13 Q. I am referring to the special rooms. Did you rotate  
14 sections as a busser in the special rooms?

15 A. Yes.

16 Q. How often?

17 A. When the three or four rooms were busy, I had to tend to  
18 all of them.

19 Q. So you would work all four sections during the shift, is  
20 that your testimony?

21 A. Yes. Because I was the only one that was working there.

22 Q. How many bussers are assigned to the special rooms?

23 A. Just me.

24 Q. So from October 2007 until about mid-November 2013, you  
25 were the only busser assigned to the special rooms?

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Ventura - cross

1 A. Yes.

2 Q. How many waiters were assigned to the special rooms while  
3 you worked in this area?

4 A. Two. And when it was very busy, others would come down.

5 Q. How many waiters would work in the special rooms on a busy  
6 night?

7 A. Three.

8 Q. Were there any head captains in the special rooms?

9 A. There was just one captain.

10 Q. And you do not recall the name of the captain, correct?

11 A. No.

12 Q. If there was an issue in the special rooms, who would you  
13 talk to about that issue?

14 A. I would speak to the captain, and then the captain would  
15 speak to the manager.

16 Q. Was there ever an occurrence when you had to speak to the  
17 manager while working in the special rooms?

18 A. No.

19 Q. When you worked in the dining hall, if there was an issue,  
20 who would you discuss that issue with?

21 A. I would speak to the captain, who would then speak to the  
22 managers.

23 Q. Did you ever have any discussions with the manager directly  
24 while employed in the dining hall?

25 A. Did I have a direct conversation with him?

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Ventura - cross

1 Q. Yes.

2 A. In 2012, once, when they changed my position.

3 Q. When you say they changed your position, are you referring  
4 to going from the special rooms back to the dining room?

5 A. Yes.

6 Q. Who did you discuss that issue with at the restaurant?

7 A. We had a meeting with the captains and the manager, and  
8 also the banquet room captain.

9 Q. Do you recall names of any of those people?

10 A. The name of the general manager is Chunsik Yu, something  
11 like that.

12 Q. What about the banquet captain you just referred to, do you  
13 recall the name of the banquet room captain?

14 A. I really don't know his name too well.

15 Q. Did you ever work at off-premise catering events?

16 A. No.

17 Q. When you were initially hired in June 2006, how many days a  
18 week did you work?

19 A. Six days.

20 Q. Did you work specific days in a given week?

21 A. I just had one day off, and that was Thursday. Besides  
22 that, I worked all the other days.

23 Q. Were your hours always the same while employed at Kum Gang  
24 San?

25 A. In the special rooms or in the dining hall?

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Ventura - cross

1 Q. When you worked in the dining hall, what were your hours?

2 A. 10:30 to 10:30.

3 Q. Did your hours ever deviate from 10:30 to 10:30 while you  
4 were employed in the dining hall?

5 A. No.

6 Q. When you worked in the special rooms, what were your hours?

7 A. I started at 10:30, but on the weekends the hours would  
8 vary.

9 Q. During the week, what time did your shift end?

10 A. Regularly at 10:30. And always on the weekends I would get  
11 out later.

12 Q. Can you be more specific when you say later?

13 A. On the weekends I would get out later because it was busy,  
14 maybe 11:30.

15 Q. When you say busier, are you referring to an event at the  
16 restaurant?

17 A. Yes.

18 Q. Who makes the work schedule for the employees at the  
19 restaurant?

20 A. There would just be a list of names of all the employees  
21 and you had to write the hours that you worked.

22 Q. Where was this list?

23 A. In front of where the register was, right next to it, in  
24 the dining hall.

25 THE COURT: When you say there was a list, was this

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Ventura - cross

1 list prepared by someone else to tell the employees when they  
2 were supposed to appear or was this a sheet of paper on which  
3 the employees were to write down the number of hours or the  
4 particular time that they actually worked?

5 THE WITNESS: It was a paper that was placed there  
6 that we had to fill in the hours that we worked.

7 THE COURT: Who was it who had told you which hours  
8 you were required to work?

9 THE WITNESS: Well, we already knew that we had to  
10 come in at 10:30. And then they would just bring that paper  
11 from the office and put it there.

12 THE COURT: Who was it who first instructed you that  
13 you had to come in at 10:30?

14 THE WITNESS: The captain that hired me back then.

15 Q. Do the employees determine how many days per week they are  
16 scheduled to work?

17 A. Could you repeat the question, please?

18 Q. Do the employees determine how many days per week they are  
19 scheduled to work?

20 A. No.

21 Q. Do the employees determine which days in a particular week  
22 they work?

23 A. No.

24 Q. When you say that you would write the hours you worked,  
25 when would you write the hours on the list?

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Ventura - cross

1 A. The same day, at the end of the workday.

2 Q. How long a period of time was on this list?

3 A. From Monday to Sunday.

4 Q. How many breaks during a shift would you receive?

5 A. For what period of time are you asking about? While I was  
6 working in the special rooms or in the dining hall?

7 Q. While you were in the dining hall, how many breaks did you  
8 receive during your shift?

9 A. I had an hour and a half long break. That was from 3:00 to  
10 4:30.

11 Q. Did you receive the same break every shift?

12 A. From time to time it would vary, like instead it would be  
13 from 4:30 to 6 sometimes.

14 Q. When you worked in the special rooms, how many breaks  
15 during the shift did you receive?

16 A. It varied.

17 Q. What were the circumstances under which it would vary?

18 A. Regularly during the week, we would get like an hour and a  
19 half break. But on the weekends it was busier so your break  
20 would be either a half an hour or an hour. And sometimes there  
21 was no break at all.

22 THE COURT: Were the special rooms used on every day  
23 of the week?

24 THE WITNESS: Yes, every day.

25 THE COURT: Do you have an understanding as to what

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Ventura - cross

1 function the special rooms played, that is, why were people  
2 placed there instead of in the main dining room?

3 THE WITNESS: Instead of the dining hall?

4 THE COURT: Yes.

5 THE WITNESS: Because there was either an event or  
6 some party, and they would meet and eat there.

7 Q. Did you receive meal breaks while employed in the dining  
8 hall?

9 A. When I would take my lunch you mean?

10 Q. Yes.

11 A. Yes.

12 Q. How long was your lunch break?

13 A. 15 to 20 minutes.

14 Q. Did you receive any other meal breaks during the shift in  
15 the dining hall?

16 A. Well, there what we would do is take turns to eat. So  
17 somebody would be working while the other one would eat.

18 Q. Did you ever eat more than one meal during a shift while  
19 employed in the dining hall?

20 A. After work, after 10:30.

21 Q. You said you had an issue when they moved you from the  
22 special rooms back to the dining hall.

23 MS. JOYNES: Objection. He did not testify to having  
24 an issue. I believe you asked him whether he had had --

25 THE COURT: Counsel, first of all, you address any

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Ventura - cross

1 objections to me, not to your adversary. Second, if you have  
2 an objection, you better stand up so we all know you are about  
3 to object. That way the witness also can stop and not answer  
4 the question before you have articulated your objection.

5 MS. JOYNES: I'm sorry, your Honor. Thank you.

6 THE COURT: The objection is overruled.

7 I think we haven't quite finished the question. The  
8 statement was made. That's when the objection was entered.

9 BY MS. AMBROZIAK:

10 Q. You said you had an issue when they moved you from the  
11 special rooms back to the dining hall. Can you tell us why you  
12 had an issue being moved back to the dining hall?

13 A. Could you repeat the question, please?

14 MS. AMBROZIAK: Can I have it read back?

15 THE COURT: Let me rephrase this.

16 You testified earlier that you had a meeting with  
17 several of the management people when you were being moved from  
18 the special rooms to the dining hall. What was the reason for  
19 that meeting?

20 THE WITNESS: Thank you.

21 Well, yes, we met with the managers when they changed  
22 me back. He said that the boss said that we had to be changed.  
23 It was two of us that were changed, that we had to go back up  
24 and work four days in the dining hall. And that decision came  
25 directly from the owner, he is the one that made the decision.

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Ventura - cross

1                   THE COURT: Had you before the meeting expressed to  
2 either a captain or a manager or a general manager unhappiness  
3 with the plan to move you back to the dining hall?

4                   THE WITNESS: No. I didn't speak to anyone.

5 Q. When you say two of you were being moved back to the dining  
6 hall, are you referring to another busser?

7 A. Yes. The who is named in the lawsuit.

8 Q. Did this busser work in the special rooms?

9                   THE INTERPRETER: In the special rooms you said?

10                  MS. AMBROZIAK: Yes.

11 A. No. He worked in the banquet room.

12 Q. Were you happy about being moved back to the dining hall?

13 A. Not much because they told me that I'd only be working four  
14 days.

15 Q. Were you given a reason why you were being moved from six  
16 days per week to four days per week?

17 A. Could you repeat the question, please?

18 Q. Were you told a reason why you were being moved from six  
19 days a week to four days a week?

20 A. No, they did not give me a reason.

21 Q. So beginning mid-November 2013, you started working four  
22 days per week at the restaurant, correct?

23 A. Yes.

24 Q. Had you ever worked less than six days per week prior to  
25 mid-November 2013?

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Ventura - cross

1 A. Less than six days?

2 Q. Yes.

3 A. In 2013?

4 Q. Prior to mid-November 2013, had you ever worked less than  
5 six days at the restaurant in a week?

6 A. Before we started the lawsuit, we worked six days. After  
7 that, they cut back on the days.

8 THE COURT: Just to clarify the time, as I understand  
9 it, the lawsuit was filed in 2012. In your declaration, you  
10 make reference to your workdays being reduced in 2012 from six  
11 days to five days. Is that in fact accurate, that is, that it  
12 was reduced from six to five before it was later reduced to  
13 four days?

14 THE WITNESS: Yes. First they reduced it to five  
15 days. And then later it was reduced to four days.

16 THE COURT: By the way, are you still working there?

17 THE WITNESS: No. I stopped working there May 11th of  
18 this year.

19 Q. Were you given a reason why your workdays were cut from six  
20 days per week to five days per week in approximately October  
21 2012?

22 A. They did not give me any reason.

23 Q. The restaurant kept a record of the hours and days you  
24 worked, isn't that correct?

25 A. I couldn't say.

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Ventura - cross

1                   THE COURT: You mentioned filling out this list that  
2 was posted near the cash register. Did you in fact fill out  
3 the number of hours and days each time you worked there?

4                   THE WITNESS: Yes.

5 Q. Did you punch a time card while you were employed at the  
6 restaurant?

7 A. What period of time are you asking about, the beginning or  
8 later?

9 Q. During this employment.

10 A. Not at first, no.

11 Q. During what period of time did you punch a time card at the  
12 restaurant?

13 A. I don't remember exactly when. It might have been like in  
14 2010 that they put a time clock in to punch in and out, and  
15 then we would punch in. And it would work for about a month or  
16 two, and then it would stop working.

17                  Then later they installed some machine that you could  
18 punch in with your fingerprint, but that was probably like in  
19 2011. I don't remember too well.

20 Q. Was there more than one time card machine at the  
21 restaurant?

22 A. There were, yes, either two or three.

23 Q. So is it your testimony that all of the time card machines  
24 would break down at the same time?

25 A. Yes, because like the one downstairs would stop working.

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Ventura - cross

1 Then we had to go upstairs to punch in.

2 Q. How many times a day did you punch your time card for the  
3 restaurant?

4 A. When I punched the card?

5 Q. Yes. How many times a day?

6 A. When you came in, when I would take my break, then when I  
7 came back from the break, and then when I left for the day.

8 Q. The list that you referred to earlier, was there always a  
9 list hung up by the cashier's register during your employment  
10 at the restaurant?

11 A. Yes, it was there, and we always had to write on it.

12 Q. Other than the time card method, the list you referred to  
13 and the fingerprint system that you referred to, are there any  
14 other methods of record keeping that you used while employed at  
15 the restaurant?

16 A. There was also some kind of ID that you had to punch in,  
17 but that was for a short period.

18 Q. Do you recall what period of time you used your ID card?

19 A. I can't really remember, not exactly.

20 Q. On the list you referred to, would you indicate the start  
21 of your shift, the start of your break, the end of your break,  
22 and the end of your shift with the time card method?

23 A. Yes.

24 Q. Do you know what happened to this list at the end of the  
25 week?

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Ventura - cross

1 A. I couldn't say.

2 Q. How often were you paid at the restaurant?

3 A. Every Sunday.

4 Q. What were your wages when you began working at the  
5 restaurant in approximately June 2006?

6 A. \$50 a day.

7 Q. Who at the restaurant told you what your starting salary  
8 would be?

9 A. Just the captain that hired me.

10 Q. Did you meet with anyone at the office when you were hired  
11 regarding your wages?

12 A. No.

13 Q. Were your wages calculated on an hourly basis?

14 A. I was just told it was \$50 a day, and that's what they paid  
15 me, and they didn't say anything else.

16 Q. Was there ever a point in time when you received more than  
17 \$50 per day at the restaurant?

18 A. Yes.

19 Q. When did you start receiving more than \$50 per day?

20 A. That was approximately in 2007.

21 Q. What was your salary increased to in June 2007?

22 A. I was getting \$50 a day, and then I got a three dollar  
23 increase, and then they were paying me \$53 a day.

24 Q. Did you ask for this raise?

25 A. No.

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Ventura - cross

1 Q. Did there ever come a point in time when you received more  
2 than \$53 per day?

3 A. Yes.

4 Q. When did you begin receiving more than \$53 per day?

5 A. That probably might have been either November or December  
6 of 2012.

7 Q. How much did you receive beginning November 2012?

8 A. I was getting 53, and they increased it to 65.

9 Q. Did you ever receive a raise after November 2012?

10 A. No.

11 Q. Did you ever ask for a raise and not receive one while  
12 employed at the restaurant?

13 A. When I got the increase to 65, it's because I asked for it.  
14 Just that.

15 Q. What method of payment was used by the restaurant to give  
16 you your wages?

17 A. Cash.

18 Q. Did you receive tips while employed as a busser?

19 A. Yes.

20 Q. Did you share tips with any other employees at the  
21 restaurant?

22 A. The waiter would give me what my share was.

23 Q. Did you receive a set amount of tips while employed at the  
24 dining hall?

25 A. From Monday to Wednesday I got 25. Friday, Saturday and

E648KIMF

Ventura - cross

1 Sunday I got 40.

2 Q. Did you ever receive less than \$25 in tips on a weekday?

3 A. In the dining hall or in the special rooms?

4 Q. In the dining hall.

5 A. No, just 25 and 40 on the weekends.

6 Q. Did you ever receive more than \$40 in tips on the weekend?

7 A. No.

8 Q. When you worked in the special rooms, did you receive a  
9 certain amount of tips?

10 A. It varied.

11 Q. Were your tips pooled with other employees' tips when you  
12 worked in the special rooms?

13 A. I couldn't say because the waiter would just give me my  
14 share.

15 Q. What was the lowest amount in tips you recall receiving on  
16 a weekday in the special rooms?

17 A. It varied so I can't say specifically or exactly. It might  
18 have been 30.

19 Q. Did you receive more in tips on the weekends when you  
20 worked in the special rooms?

21 A. I received a little more, yes.

22 Q. What is the lowest amount in tips you received on a weekend  
23 while working the special rooms?

24 A. 55 to 60.

25 Q. Do you recall the highest amount you ever received working

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Ventura - cross

1 a weekday in the special rooms?

2 A. No, I don't.

3 Q. Who would hand you your tips at the end of the evening?

4 A. The captain.

5 Q. Was that the procedure when you worked in the dining hall  
6 and the special rooms?

7 A. When I worked in the dining hall, the captain that worked  
8 the dining hall gave me my tips. And when I worked in the  
9 special rooms, the captain that worked the special rooms gave  
10 me my tips.

11 Q. Do you know how your tips were calculated in the special  
12 rooms?

13 A. I couldn't say. Like I said, I was just given what my  
14 share was.

15 Q. Did you receive any paid vacation while employed at the  
16 restaurant?

17 A. No.

18 Q. Did you take any unpaid vacation while employed at the  
19 restaurant?

20 A. Yes.

21 Q. How many unpaid vacations did you take over the course of  
22 your employment?

23 A. Three weeks of vacation on different years.

24 Q. Is that three weeks total over the course of your  
25 employment?

E648KIMF

Ventura - cross

1 A. Yes.

2 Q. Did you ever take any sick days while employed at the  
3 restaurant?

4 A. Also.

5 Q. Can you clarify what you mean by "also"?

6 A. I also took about four days off because I was sick in all  
7 the time that I worked there.

8 Q. Were these sick days paid or unpaid?

9 A. No.

10 Q. Unpaid?

11 A. Unpaid.

12 Q. Did you ever take any kind of leave of absence from your  
13 employment in the restaurant?

14 A. No, just the vacation time and the sick days that I took.

15 Q. Did you receive any other compensation from the restaurant  
16 other than the wages and the tips we previously discussed?

17 A. Could you repeat the question, please?

18 Q. Did you receive any other compensation from the restaurant  
19 other than the wages and tips we have previously discussed?

20 A. No.

21 Q. Did you ever receive any bonus while employed at the  
22 restaurant?

23 A. No.

24 Q. Who is the owner of Kum Gang San restaurant?

25 A. The gentleman that's here present.

E648KIMF

Ventura - cross

1 Q. Do you know the name of that gentleman?

2 A. Not too well, but I do recognize him.

3 Q. How often did you see the owner present at the restaurant?

4 A. Most of the time he was in the restaurant.

5 Q. Did you see him every day at the restaurant, every day you  
6 worked at the restaurant?

7 A. Well, since I was working, probably. You can't really see  
8 while you're working.

9 Q. How long would the owner remain in the restaurant?

10 A. I couldn't say.

11 Q. Who was the manager of Kum Gang San restaurant when you  
12 were hired in June 2006?

13 A. Chunsik Yu, something like that, the one that is present  
14 here also.

15 Q. Were there any other managers at the restaurant during your  
16 employment?

17 A. Myungja Lee also.

18 Q. Do you recall a manager at the restaurant by the name of  
19 Mr. Kim?

20 A. No, I don't.

21 Q. Do you recall the manager Chunsik Yu taking a leave of  
22 absence from the restaurant?

23 A. I don't understand the question.

24 Q. Do you recall a period of time when the manager Chunsik Yu  
25 was not employed at the restaurant?

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Ventura - cross

1 A. I don't recall.

2 Q. Was Myungja Lee a general manager at the restaurant?

3 A. Probably, yes.

4 Q. Did you ever have a conversation with the owner or the  
5 managers about not receiving the correct amount of wages?

6 A. No.

7 Q. You are not currently employed at the restaurant, that's  
8 correct?

9 A. No.

10 THE COURT: To avoid ambiguity, is it in fact the case  
11 that you are no longer employed?

12 THE WITNESS: I am no longer working there.

13 THE COURT: OK.

14 Q. What were the circumstances surrounding the termination of  
15 your employment at the restaurant?

16 A. What was the reason, what was the cause? I didn't like  
17 working there anymore.

18 Q. Did you quit?

19 A. Yes, because I felt a lot of pressure there.

20 THE COURT: What was the nature of the pressure that  
21 you say you felt?

22 THE WITNESS: I was being pressured a lot by the  
23 captain in the banquet room. If there was anything that I  
24 didn't have time to do for whatever reason, I was pressured to  
25 do so.

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Ventura - cross

1 Q. This captain of the banquet room that you referred to, that  
2 person was not your supervisor at the restaurant, right?

3 A. No.

4 MS. AMBROZIAK: I have nothing further for this  
5 witness.

6 THE COURT: Any redirect?

7 MS. JOYNES: Yes, your Honor.

8 THE COURT: Actually, perhaps this would be a good  
9 time to take a mid-afternoon break. We will take about five  
10 minutes.

11 (Recess)

12 THE COURT: You may proceed.

13 REDIRECT EXAMINATION

14 BY MS. JOYNES:

15 Q. Mr. Ventura, do you see the individual that you referred to  
16 as Chunsik Yu here in the courtroom today?

17 A. Yes.

18 Q. Can you please identify him by describing where he is  
19 sitting and what he is wearing?

20 A. He has a shirt with squares on it.

21 Q. Is that individual wearing the shirt with squares the owner  
22 of the restaurant or Chunsik Yu?

23 A. He is the owner.

24 Q. Can you please identify the individual you referred to as  
25 Chunsik Yu in the courtroom?

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Ventura - redirect

1 A. The one with the black suit and the tie in the same row.

2 Q. Where in the row are they sitting?

3 A. The first row.

4 Q. When you were hired, was there anyone else in the room with  
5 the captain?

6 A. No.

7 Q. When you switched from the special rooms to the dining hall  
8 in approximately November 2013, how many days per week were you  
9 asked to work in the dining hall?

10 A. Four days.

11 Q. Was it always four days or did it vary?

12 A. I probably worked for about a month just four days, and  
13 then after that it varied. It was like one additional day, one  
14 week four days, one week five days.

15 Q. Did it alternate between four and five days until you quit  
16 in May 2014?

17 A. Yes.

18 MS. JOYNES: No further questions.

19 THE COURT: Thank you.

20 Any recross?

21 MS. AMBROZIAK: No recross.

22 THE COURT: Thank you. You may step down.

23 (Witness excused)

24 MS. HUIZAR: Your Honor, we would like to present  
25 Mr. Zhe Yuan Shen to testify.

E648KIMF

Ventura - redirect

1 ZHE YUAN SHEN,

2 called as a witness by the plaintiffs,

3 having been duly sworn, testified through

4 certified Korean interpreter, as follows:

5 MS. HUIZAR: May I approach the witness, your Honor?

6 THE COURT: State your full name and please spell your  
7 last name slowly.

8 THE WITNESS: Zhe Yuan Shen, S-H-E-N.

9 DIRECT EXAMINATION

10 BY MS. HUIZAR:

11 Q. Mr. Shen, I would like to show you what has been marked as  
12 Plaintiffs' Exhibit number 31. Do you recognize this document?

13 A. Yes.

14 Q. Can you identify what this document is?

15 A. I believe this document belongs to my attorney.

16 Q. Is this your declaration for this case?

17 A. That's my guess. It's written in English so it's difficult  
18 for me to know.

19 Q. I would like to direct you to the last page.

20 A. OK.

21 Q. Is that your signature?

22 A. Yes.

23 Q. Is everything in the document that you signed correct and  
24 true?

25 A. Yes.

E648KIMF

Shen - direct

1 MS. HUIZAR: Your Honor, plaintiffs would like to  
2 introduce this into the record, Plaintiffs' Exhibit 31.

3 THE COURT: Any objection?

4 MS. AMBROZIAK: No objection.

5 THE COURT: Plaintiffs' Exhibit 31 is received.

6 (Plaintiffs' Exhibit 31 received in evidence)

7 MS. HUIZAR: Thank you.

8 THE COURT: Cross-examination.

9 CROSS-EXAMINATION

10 BY MS. AMBROZIAK:

11 Q. Good afternoon, Mr. Shen.

12 A. Good afternoon.

13 Q. You state in your declaration that you began working at Kum  
14 Gang San restaurant for one month in about April 2000, and then  
15 you left and returned in July 2000, is that accurate?

16 A. Yes, that's correct.

17 Q. Why did you stop working at Kum Gang San restaurant after  
18 April 2000?

19 MR. KIMERLING: I am sorry to interrupt. I apologize.  
20 We are working only with this mike so the other parties can  
21 hear. I just ask that the interpreter and the witness speak  
22 into the mike so that the defendants and the plaintiffs can  
23 hear the questions and answers.

24 THE COURT: Very well.

25 The question, I believe, was why you left work in

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Shen - cross

1 April of 2000?

2 A. At the time, I worked the night shift and my work started  
3 from 10:00 in the evening until 10:00 in the morning so it was  
4 difficult.

5 Q. Did you quit the restaurant?

6 A. Yes.

7 Q. What were the circumstances surrounding your reemployment  
8 in July 2000?

9 A. Well, I got a daytime job at that time.

10 Q. Did you contact the restaurant about being reemployed in  
11 July 2000?

12 A. Yes.

13 Q. Did you have to interview for the job in July 2000?

14 A. I can't recall if I did or not.

15 Q. Who was the individual that hired you in April 2000?

16 A. The chef in the kitchen.

17 Q. Do you recall the name of the chef?

18 A. At the time, there was Mr. Kim.

19 Q. Who hired you when you were reemployed in July 2000?

20 A. Same person, Mr. Kim.

21 Q. You worked as a cook at Kum Gang San restaurant, correct?

22 A. Yes.

23 Q. Did you ever work at the Manhattan location?

24 A. No.

25 Q. During your employment, were you always a cook at the

E648KIMF

Shen - cross

1 restaurant?

2 A. Yes.

3 Q. What were your job duties as a cook in the restaurant?

4 A. I worked at the kitchen for parties.

5 Q. How much kitchens are there in the restaurant?

6 A. There's one called Janchi Janchi, and a party room and  
7 upstairs hall, three.

8 Q. Which of these three kitchens did you work in?

9 A. I worked at the party kitchen.

10 Q. When you worked in the party kitchen, what were your job  
11 duties?

12 A. Be in charge of food for parties.

13 Q. Did you do the prep for the parties?

14 A. Yes. I was in charge of the parties, as well as making  
15 sauce for kalpi and some dishes for Janchi Janchi orders.

16 THE COURT: What is a Janchi Janchi order?

17 THE WITNESS: Meat stew, depending on the menu. So  
18 there were different menus.

19 THE COURT: Were these prepared exclusively for the  
20 parties and the use in the party room?

21 THE WITNESS: The dishes that I prepared goes to the  
22 party rooms, as well as some private orders from Janchi Janchi.

23 THE COURT: What was Janchi Janchi?

24 THE WITNESS: It's like a catering service.

25 Q. When you say you prepared food for the parties, are you

E648KIMF

Shen - cross

1 referring to the banquet room and the special rooms?

2 A. It was mainly for parties.

3 THE COURT: Do you know if those parties were held in  
4 the banquet room or in the special rooms or both?

5 THE WITNESS: Yes.

6 THE COURT: That is, those parties were held in both  
7 the banquet room and the special rooms?

8 THE WITNESS: Yes.

9 Q. It says in your declaration that you also worked in the  
10 kitchen that served the dining hall, is that correct?

11 A. Yes, only when there are parties.

12 Q. Did the upstairs kitchen also prepare food for parties?

13 A. No.

14 Q. So under what circumstances did you work in the upstairs  
15 kitchen?

16 A. In or around the year 2007, for a couple of months I was  
17 there.

18 Q. Does the upstairs kitchen exclusively serve the dining  
19 hall?

20 A. Yes, that's correct, for the upstairs guests.

21 Q. Were you ever promoted during your employment?

22 A. No, no promotion.

23 Q. Are you familiar with the dining hall in the restaurant?

24 A. Not really, not the upstairs room, because I'm only  
25 involved with parties.

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Shen - cross

1 Q. Do you know how many sections the dining hall is comprised  
2 of?

3 A. I don't really have knowledge about the upstairs because,  
4 like I said, I was only involved with parties.

5 Q. Do you ever meet with customers interested in booking  
6 parties at the restaurant?

7 A. No. I was in the kitchen so I don't directly get involved  
8 with customers.

9 Q. Do you know how many sections are in the banquet room?

10 A. I'm in the kitchen so I don't know.

11 Q. Does each kitchen in the restaurant have a head chef?

12 A. Yes.

13 Q. Who is the head chef you worked for in the party room  
14 kitchen?

15 A. In 2008, that's when I was last employed at the restaurant,  
16 and it was Mr. Yoon.

17 MS. AMBROZIAK: Did he say Mr. Yu?

18 THE INTERPRETER: I believe it was Mr. Yoon.

19 Q. During what period of time did you work in the party room  
20 kitchen?

21 A. Since July of 2000 until I quit the restaurant.

22 Q. Was Mr. Yoon your supervisor when you worked in the party  
23 room?

24 A. Yes. He was always the person in charge.

25 Q. Did you have any other supervisors when you worked in the

E648KIMF

Shen - cross

1 party room kitchen?

2 A. Yes, a long time ago.

3 Q. Who are these other supervisors you had while employed in  
4 the party room kitchen?

5 A. Mr. Kim, Mr. Pae, and Mr. Yoon.

6 Q. Were all three of these gentlemen head chefs in the party  
7 room kitchen?

8 A. Yes.

9 Q. During what period of time, did you work in the Janchi  
10 Janchi kitchen?

11 A. No, I did not work at the Janchi Janchi kitchen.

12 Q. You prepared food for Janchi Janchi, correct?

13 A. Yes. There was a time when our party kitchen prepared food  
14 for a Janchi Janchi catering order.

15 Q. Where in the restaurant is the party room kitchen located?

16 A. In the basement.

17 Q. During what period of time did you work in the upstairs  
18 kitchen at the restaurant?

19 A. For a short time in 2007 for about two months.

20 Q. Who was your supervisor when you worked in the upstairs  
21 kitchen?

22 A. Mr. Bae.

23 Q. Did you have any other supervisors other than Mr. Bae while  
24 you worked in the upstairs kitchen?

25 A. No, he was the only one.

E648KIMF

Shen - cross

1 Q. Are there head captains in the kitchen?

2 A. Yes.

3 Q. Were you ever a head captain?

4 A. No.

5 Q. Was the head captain a supervisor in the kitchen?

6 A. What do you mean?

7 Q. Did you take orders from the head captain in the kitchen?

8 A. Yes.

9 Q. Is the head captain someone other than the head chef in the  
10 kitchen?

11 A. Well, they are two different people.

12 Q. Who was the head captain in the basement party room kitchen  
13 during your employment?

14 A. Mr. Yoon, he was the head captain at the time of my  
15 termination of employment at the restaurant.

16 Q. Who was the head captain in the upstairs kitchen when you  
17 worked in that kitchen?

18 A. Mr. Bae.

19 Q. When you were initially hired in April 2000, how many days  
20 a week did you work?

21 A. Six days.

22 Q. What were your hours when you worked in April 2000?

23 A. 10:30 in the evening to 10:30 in the morning.

24 Q. Did you ever work less than six days a week in April 2000?

25 A. No.

E648KIMF

Shen - cross

1 Q. When you were reemployed in July 2000, how many days a week  
2 did you work in the kitchen?

3 A. Six days.

4 THE COURT: During that one month period, when you  
5 were working the night shift 10:30 p.m. to 10:30 a.m., for whom  
6 and for what purpose was food being prepared?

7 THE WITNESS: Well, the restaurant was open 24 hours  
8 at that time.

9 THE COURT: Were there parties going on in the middle  
10 of the night?

11 THE WITNESS: No. The upstairs kitchen had nothing to  
12 do with parties.

13 Q. You said that Janchi Janchi does not have a separate  
14 kitchen, is that correct?

15 A. Yes.

16 THE COURT: Yes, it does, or yes, it doesn't?

17 THE WITNESS: It does have a separate kitchen.

18 Q. When you prepared food for Janchi Janchi, you did not work  
19 in the Janchi Janchi kitchen, is that correct?

20 A. That's correct.

21 Q. How many days a week did you work in July 2000?

22 MS. HUIZAR: Objection. Asked and answered.

23 THE COURT: Overruled.

24 A. Six days.

25 Q. What were your hours when you were reemployed in July 2000?

E648KIMF

Shen - cross

1 A. 10:30 a.m. to 10:30 p.m.

2 Q. Did your hours ever deviate from 10:30 a.m. to 10:30 p.m.  
3 after July 2000?

4 A. No.

5 Q. Who makes the work schedule for the kitchen staff?

6 A. The manager.

7 Q. Can you please identify the manager you're referring to?

8 A. The one that I gave you initially was Mr. Kim.

9 Q. Did Mr. Yoon ever prepare the work schedule for the kitchen  
10 staff?

11 A. It's a little confusing because initially it was Mr. Kim,  
12 and then the duty went to Mr. Pae, and then it went to Mr.  
13 Yoon. I was confused.

14 THE COURT: Do you have any personal knowledge of who  
15 it was who made the decision as to the hours of the kitchen  
16 staff, or were you simply told by these three individuals what  
17 the hours were?

18 THE WITNESS: Well, when I went to work everybody was  
19 working from 10:30 to 10:30, so I just took it as it is.

20 THE COURT: So I take it that you didn't have any  
21 personal knowledge of who made the decision as to the hours  
22 that everyone would work, is that correct?

23 THE WITNESS: That's correct.

24 Q. Did anyone at the restaurant advise you that your shift  
25 started at 10:30 a.m.?

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Shen - cross

1 A. Well, our work shift started from 10:30 to 10:30.

2 THE COURT: Presumably someone initially told you that  
3 the hours were 10:30 to 10:30, is that correct?

4 THE WITNESS: Yes. Mr. Kim probably.

5 Q. Do you have any knowledge regarding who makes the schedule  
6 for the employees outside the kitchen in the restaurant?

7 A. That I have nothing to do with, so no.

8 Q. How many breaks during a shift would you receive in the  
9 kitchen?

10 MS. HUIZAR: Objection. Time period.

11 THE COURT: Was there a different pattern of breaks  
12 from one period of time of your work to another?

13 THE WITNESS: Yes. I believe it changed.

14 THE COURT: What did it start at and how did it  
15 change?

16 THE WITNESS: Initially it was 10:30, and then 10, 10.  
17 Then later on it was 9, probably. I can't recall exactly.

18 THE COURT: Are you saying initially you had a break  
19 at 10:30?

20 THE WITNESS: Oh, I'm sorry. I went to work at 10:30.

21 THE COURT: When did you have your breaks?

22 THE WITNESS: Normally it was between 2:30 to 4:00.

23 THE COURT: Did that change over time?

24 THE WITNESS: No, it stayed the same.

25 Q. Did you ever receive more than one break during a shift?

E648KIMF

Shen - cross

1 A. What do you mean?

2 Q. Other than this 2:30 to 4 p.m. break, did you ever take a  
3 second break during a shift?

4 A. No.

5 Q. Did you ever receive a break for meals?

6 THE INTERPRETER: May the interpreter ask the attorney  
7 to repeat the question? She did not hear it.

8 Q. Did you ever receive a meal break?

9 A. No.

10 Q. The restaurant kept a record of the hours and days you  
11 worked, isn't that correct?

12 THE COURT: If you know.

13 A. Obviously, probably yes.

14 THE COURT: Do you have any personal knowledge of  
15 whether records were kept by the restaurant of your hours?

16 THE WITNESS: You're not asking me if I kept it?

17 THE COURT: No. I am asking you if you have any  
18 personal knowledge of whether the restaurant kept a record of  
19 your hours?

20 THE WITNESS: I wouldn't know.

21 Q. Did you ever punch a time card while you were employed at  
22 the restaurant?

23 A. Yes.

24 Q. During what period of time did you punch a time card?

25 A. That I don't recall.

E648KIMF

Shen - cross

1 Q. Was there ever a period of time during your employment when  
2 you did not punch a time card?

3 A. No, no.

4 Q. How many times a day did you punch the time card at the  
5 restaurant?

6 A. Twice.

7 Q. What are these two times?

8 A. At the beginning of work and at the finish of work.

9 Q. Did you have to punch the time card at the start of your  
10 break and at the end of your break?

11 A. No.

12 Q. Was there ever a list hung up in the restaurant where you  
13 had to indicate the days and hours you worked?

14 A. Yes, I believe so.

15 Q. Do you recall during what period of time you used the list?

16 A. That I can't recall.

17 Q. Did you ever use a fingerprint system while employed at the  
18 restaurant?

19 A. No.

20 Q. Did you have an ID card?

21 A. Yes.

22 Q. Did you ever use this ID card to indicate when you arrived  
23 at the restaurant?

24 A. Yes, at the beginning and end of shift.

25 Q. Do you recall what period of time you used this ID card to

E648KIMF

Shen - cross

1 indicate the start and end of your shift?

2 A. I don't remember when that was.

3 Q. Which of these methods was in effect when you were hired in  
4 July 2000?

5 A. Well, at the time none of those was used.

6 Q. What did you use when you were hired in July 2000 to  
7 indicate that you arrived and left?

8 A. Well, my boss recorded it.

9 Q. Who is the boss you are referring to?

10 A. Mr. Kim.

11 Q. You were paid weekly at the restaurant, is that correct?

12 A. Yes.

13 Q. What were your wages when you worked in April 2000?

14 A. 350.

15 Q. Can you be more specific?

16 THE COURT: More specific than 350?

17 Q. Is it weekly?

18 THE COURT: How more specific can you be?

19 MS. AMBROZIAK: The witness didn't indicate if it was  
20 daily, hourly.

21 THE COURT: Then why didn't you just follow up since  
22 you didn't ask that question?

23 A. It was weekly.

24 Q. You received \$350 per week, is that correct?

25 A. Yes.

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Shen - cross

1 Q. Who at the restaurant told you what your starting salary  
2 would be in April 2000?

3 A. Mr. Kim.

4 Q. Did you meet with anyone other than Mr. Kim when you were  
5 hired in April 2000 regarding your wages?

6 A. No.

7 Q. When you were reemployed in July 2000, what were your  
8 wages?

9 A. 400.

10 Q. Did Mr. Kim advise you that your weekly wages would be  
11 \$400?

12 A. Yes.

13 Q. Did you meet with anyone else at the restaurant in July  
14 2000 regarding your starting wage?

15 A. No.

16 Q. Did you ever receive a raise while employed at the  
17 restaurant?

18 A. Yes.

19 Q. When did you receive a raise?

20 A. Probably late 2001, either summer or late 2001.

21 Q. How much of an increase did you receive in late 2001?

22 A. \$50.

23 Q. Was there a period of time when you made more than \$450 per  
24 week while employed at the restaurant?

25 A. At that time or?

E648KIMF

Shen - cross

1 Q. Did you ever receive more than \$450 per week?

2 A. Yes. At the end of my employment, it was a different  
3 amount.

4 Q. When was the next raise you received after late 2001?

5 A. Probably in or around 2003.

6 Q. Do you recall which month in 2003 you received that raise?

7 A. It may have been in the spring of 2003. However, I'm sure  
8 it was 2003.

9 Q. How much was the raise you received in 2003?

10 A. \$50.

11 Q. After 2003, did you ever receive a raise?

12 A. Yes. In year 2004, I got a \$20 raise -- wait a minute.

13 Was it 2004?

14 THE COURT: Well, that's what you say in your  
15 declaration.

16 A. Yes, that's correct.

17 Q. Did you ever receive a raise after the \$20 raise in 2004?

18 A. Yes. Probably till the end of that year I was getting 550.

19 Q. Did you ever receive a raise after late 2004?

20 A. Starting from the year 2004 to 2006 December, there was one  
21 more raise, and I believe I got 650. So at the time of  
22 December of 2006, I was getting 650.

23 Q. How much were you making on a weekly basis when your  
24 employment was terminated?

25 A. \$800, and that was late April of 2008. That's when I

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Shen - cross

1 stopped working there, and I was getting \$800.

2 Q. After August 2006, did you ever receive a raise?

3 THE COURT: Inasmuch as he has testified that by the  
4 time he left employment he was getting \$800, it would seem as  
5 if he has effectively testified to that already.

6 Shall we move on?

7 MS. AMBROZIAK: I want to see if he deviates from his  
8 declaration in the amount of wages he was receiving from the  
9 restaurant.

10 THE COURT: I understand what you want to do. Why  
11 don't you move on?

12 Q. You never received tips while employed at the restaurant,  
13 correct?

14 A. No.

15 Q. What method of payment was used by the restaurant to pay  
16 you your wages?

17 A. Checks and cash.

18 Q. Were you always paid by both methods?

19 A. Yes.

20 Q. You state in your declaration that you attended religious  
21 services held in the restaurant. How often were these  
22 religious services?

23 THE INTERPRETER: May the interpreter ask Mr. Shen to  
24 clarify his answer, please, because his answer was confusing?

25 THE COURT: Go ahead.

E648KIMF

Shen - cross

1 A. Well, it's difficult to understand the question.

2 THE COURT: Do you recall attending religious services  
3 at the restaurant?

4 THE WITNESS: Well, there's a religious service once  
5 every week. However, if I have a lot of work in the kitchen,  
6 then I wouldn't be able to attend the service because I have to  
7 do my work first.

8 THE COURT: And these services were held every Sunday?

9 THE WITNESS: Yes.

10 THE COURT: Were they attended by the employees of the  
11 restaurant?

12 THE WITNESS: Yes.

13 THE COURT: Did anyone tell you from management that  
14 you were expected to attend these services?

15 THE WITNESS: No.

16 Q. Did anyone pressure you to contribute to the food expenses  
17 for the Sunday services?

18 A. No.

19 Q. Did you ever personally contribute to food expenses for the  
20 religious services?

21 A. Yes.

22 Q. Was it the two times you referred to in your declaration?

23 A. That's correct, twice.

24 Q. Do you know who the owner of Kum Gang San restaurant is?

25 A. Yes.

E648KIMF

Shen - cross

1 Q. How often did you see the owner present at the restaurant?

2 A. My guess is that he's there every day.

3 Q. Do you recall seeing him every day at the restaurant?

4 A. Yes.

5 Q. Do you recall how long the owner would stay at the  
6 restaurant?

7 A. That I wouldn't know.

8 Q. Who was the manager of Kum Gang San when you were hired in  
9 April 2000?

10 A. We are talking about the general manager?

11 Q. The manager of the restaurant I am referring to.

12 A. I believe it was Mr. Oh.

13 THE COURT: Do you have any personal knowledge of  
14 this?

15 THE WITNESS: Yes. I believe that's correct.

16 Q. Was Mr. Oh the manager of the restaurant when you were  
17 reemployed in July 2000?

18 A. Yes. He was there at that time as well.

19 Q. Were there any other managers of Kum Gang San restaurant  
20 during your employment?

21 A. Yes, Mr. Yoon. That's my knowledge. However, we are not  
22 privy to such detailed information.

23 Q. Did you ever have any meetings with the owner, Myungja Lee?

24 A. No.

25 Q. Did you ever have any meetings with the defendant Chunsik

E648KIMF

Shen - cross

1 Yu?

2 A. No.

3 Q. What were the circumstances surrounding the termination of  
4 your employment?

5 A. Well, the truth is it was just way too difficult.

6 Q. What do you mean by way too difficult?

7 A. There was a lot of work, hours were long, you know, it's  
8 long hours and difficult work.

9 Q. Did you ever make any complaints with any employees  
10 regarding the long hours you're referring to?

11 A. Not at the time, no.

12 Q. Did you at any time while employed at the restaurant  
13 complain about the long hours?

14 A. No.

15 Q. If you had an issue at the restaurant, which employee would  
16 you go to discuss that issue with?

17 A. My superior.

18 Q. By superior, are you referring to Mr. Kim?

19 A. Yes. Mr. Yoon at the time of my termination. It was Mr.  
20 Yoon.

21 Q. Going back to the breaks, was there ever a period of time  
22 during your employment when you did not receive a break during  
23 your shift?

24 A. Yes.

25 Q. What period of time did you not receive a break?

E648KIMF

Shen - cross

1 A. Well, in the year 2001, at that time I didn't even know  
2 that we had break times.

3 Q. Who advised you that you would receive a break after July  
4 2001?

5 A. Well, I didn't know that there even was a break time so I  
6 just kept working at that time.

7 Q. Who at the restaurant advised you that you could start  
8 taking breaks during your shift?

9 A. Well, at that time, right after I finished eating, I had to  
10 start working so I didn't even know that there was a break  
11 time.

12 THE COURT: Did there come a time when you started  
13 taking breaks?

14 THE WITNESS: Yes.

15 THE COURT: Did that come about because someone told  
16 you that you could take a break?

17 THE WITNESS: It wasn't that. It just happened  
18 naturally.

19 THE COURT: So no one ever told you you could take a  
20 break?

21 THE WITNESS: Well, later on Mr. Kim told me.

22 Q. Did you ever ask for any of the raises you received while  
23 employed at the restaurant?

24 THE INTERPRETER: May the interpreter ask the attorney  
25 to repeat the question? She did not hear it.

E648KIMF

Shen - cross

1 Q. Did you ever ask for any of the raises that you received  
2 while employed at the restaurant?

3 A. Well, could you repeat the question, please? It's kind of  
4 strange.

5 Q. Did the restaurant give you a raise without you asking for  
6 one?

7 A. No.

8 Q. When did you ask for a raise?

9 A. I gave you like different times, and I received different  
10 raises at those times.

11 THE COURT: So in each case when you got a raise, it  
12 was because you had asked for one?

13 THE WITNESS: Yes, that's correct.

14 Q. Whom did you ask at the restaurant for a raise?

15 A. The person who was in charge of us, Mr. Yoon, Mr. Pae and  
16 Mr. Kim.

17 Q. Who at the restaurant advised you that you would be  
18 receiving a raise?

19 A. It was always my superiors.

20 MS. AMBROZIAK: I have nothing further.

21 THE COURT: Any redirect?

22 MS. HUIZAR: Yes, your Honor.

23 REDIRECT EXAMINATION

24 BY MS. HUIZAR:

25 Q. Mr. Shen, you have testified that you took breaks from 2:30

E648KIMF

Shen - redirect

1 to 4 p.m. after 2001 or after the summer of 2001, is that  
2 correct?

3 A. Yes.

4 Q. When you took this break from 2:30 to 4 p.m., did you also  
5 take this break on the weekdays and the weekends?

6 A. Well, during weekends, when there are a lot of parties  
7 scheduled, we couldn't have breaks.

8 MS. HUIZAR: No further questions.

9 THE COURT: Any recross?

10 MS. AMBROZIAK: No recross.

11 THE COURT: Thank you. You can step down.

12 (Witness excused)

13 THE COURT: At this point, we will suspend until  
14 tomorrow. We will start at 10:00. And my anticipation is most  
15 days we will go from 10 until 5, with a lunch break somewhat in  
16 excess of one hour, with a mid-morning break and a  
17 mid-afternoon break. There may be some occasions, because it's  
18 a bench trial and I may have some other matters involved, that  
19 we will take partial days of testimony, but we will try to keep  
20 going ahead every day of the week five days a week until we are  
21 finished.

22 Would you expect that today's session is a  
23 representative sample of the amount of time likely to be  
24 consumed by cross-examination and redirect examination?

25 MS. AMBROZIAK: I do have more questions for the

E648KIMF

1 waiters. We haven't crossed any of the waiters yet. So I  
2 anticipate another hour per witness.

3 THE COURT: Is there anything else that we should deal  
4 with at this time?

5 MR. KIMERLING: Not from plaintiffs' perspective. We  
6 have exhibits that we are going to enter into evidence, if you  
7 want to do that if you have time.

8 THE COURT: I think at this point, it's just as well  
9 to take our recess and start again fresh tomorrow.

10 Anything else on defendants' end?

11 MS. AMBROZIAK: Nothing from the defendants.

12 THE COURT: Thank you.

13 (Adjourned to Thursday, June 5, 2014, at 10:00 a.m.)

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